

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate
Appraiser's License of David S. Ross,
License No. 20052983

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Manuel J. Cervantes on October 23, 2008, at the St. Paul offices of the Office of Administrative Hearings. Michael J Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by, or on behalf of David S. Ross (Respondent). The hearing record closed on October 23, 2008.

STATEMENT OF THE ISSUES

1. Whether the Respondent, by performing an appraisal without a license, violated Minn. Stat. § 82B.03, subd. 1(a) (2006).
2. Whether the Respondent, by signing two real estate appraisals, violated Minn. Stat. § 82B.03, subd. 1(b) (2006).
3. Whether the Respondent, by representing himself to be a licensed appraiser, violated Minn. Stat. § 82B.03, subd. 1(c) (2006)?
4. Whether the Respondent, by failing to meet the minimum qualifications required for licensing as a real estate appraiser, has violated Minn. Stat, § 82B.20, subd. 2(2) (2006).

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 23, 2008, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of and Order for Hearing) in this matter was mailed to his most recent address on record. The Notice of and Order for Hearing indicated that a prehearing conference would be held in this matter on October 22, 2008.

2 The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action maybe upheld.

. . .

Pursuant to Minn. Stat. § 45.027, subd. 6 (2006), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent violated any law, rule or order.

3. No one appeared at the October 22, 2008, prehearing on behalf of David S. Ross. No prehearing request was made for a continuance, nor was any communication received by the undersigned from David S. Ross.

4. The statement of charges alleges that:

- (a) The Respondent is not licensed by the Department in any capacity.
- (b) The Department received a complaint from Woodlands National Bank of Onamia, Minnesota. The Department's investigation revealed that the Respondent prepared real estate appraisals despite his lack of a license for Woodland National Bank in December 2006 and February 2007. The appraisals were for properties located in Grand Portage, Minnesota. ¶

5. The allegations contained in the statement of charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 45.027, 82B.03 and 82B.20 (2006).

2. Respondent received notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled prehearing conference.

4. Pursuant to Minn. R. 1400 6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original statement of charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the statement of charges, the Respondent, by representing himself to be a licensed appraiser, has violated Minn. Stat. § 82B.03, subd. 1(c) (2006).

6. Based upon the facts set forth in the statement of charges, the Respondent, by performing an appraisal without a license, violated Minn. Stat. § 82B.03, subd. 1(a) (2006).

7. Based upon the facts set forth in the statement of charges, the Respondent, by signing two real estate appraisals, violated Minn. Stat. § 82B.03, subd. 1(b) (2006).

8. Based upon the facts set forth in the statement of charges, the Respondent, by representing himself to be a licensed appraiser, violated Minn. Stat. § 82B.03, subd. 1(c) (2006).

9. Based upon the facts set forth in the statement of charges, the Respondent, by failing to meet the minimum qualifications required for licensing as a real estate appraiser, has violated Minn. Stat. § 82B.20, subd. 2(2) (2006).

10. The imposition of disciplinary sanctions against Respondent is in the public interest. Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that appropriate disciplinary action be taken against the Real Estate Appraiser's License of David S. Ross, License No. 20052983. The undersigned recommends that discipline be imposed upon Counts I, II, III, and IV of the statement of charges.

Dated: November 21, 2008

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally Recorded; No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of

the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, or call the Department at (651) 296-4026, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.